

In the Matter of

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MM Docket number 94-130  
Amendments of Parts 73 and 74 of  
the Commissions rules to permit  
unattended operation of broadcast  
stations.

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Comments from Curtis W. Flick  
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Credentials: I have filed comments on other matters  
have been employed as a broadcast engineer  
for many years, and my qualifications are  
a matter of record.

Dear Sirs:

First an apology, in that I was unable to discover that an actual NOI existed prior to January 20, 1995, and a non-alterable travel schedule kept me from seeing the NOI prior to Feb 13, 1995. The efforts of Gordon Godfrey, in the Mass Media branch are acknowledged and appreciated in getting a copy of the NOI to me, when I finally was able to determine to contact him.

Introduction:

These comments are deliberately kept brief at this late time, and do not deal in detail with specific questions posed unless it is strongly felt that detailed comment may be necessary.

Summary:

The broadcast services will be enhanced and achieve greater efficiency by the reduction of regulatory burden imposed by requiring licensed "duty operators" and other related costs pertaining to attended operation of broadcast stations and automated broadcast stations. It would be more advantageous to have competent engineers on-call if needed than to have in-competent duty operators to fulfill the letter of the law.

Discussion :

The general state of the art has permitted several automated systems, several of which are tailored to fit existing ATS rules, and several others which while meeting all prudent practical requirements, do not completely comply with current rules. Many of these systems can provide monitor and control functions at broadcast stations which are far better and more comprehensive than the current crop of duty operators.

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The commissions rules currently requiring duty operators do, in a very minimal way, insure that most licensees maintain an appearance of attempting to avoid sanctions under the current rules. It is the experience of this writer that the technical competence of legally acceptable duty operators has been reduced to near zero by the current rules. This Notice appears to conclude that if the current duty operator requirements can be fulfilled by the mere presence of a warm body, whether technically competent or not, then the solution is to just eliminate the duty operator requirement. This can be partially supported in that often no operator can be preferable to an incompetent or bad operator, or, worse yet, an "air personality" whose last regard is the commissions rules, serving as a duty operator. None-the-less it is the conclusion of this writer that the public interest will be better served by eliminating the requirement for a live duty operator at broadcast stations, PROVIDED adequate control is obtained through either a contract service, or adequate automated monitor and control equipment.

In specific comment as to point 8. in the NOI, this writer feels that any blanket reduction in requirements will most definitely encourage negligence and irresponsibility to an even greater extent by those licensees predisposed in that direction already. It will not encourage any laxity by responsible broadcasters in any service.

As to point 10. in the NOI. This writer feels that it would be better to require the ATS-like equipment to notify a COMPETENT on-call operator. It is felt that an operator stationed at a designated control point is unnecessary, however the need for competent human intervention must not be underestimated. The move to requiring no-one be notified and the ATS equipment remove the station from the air is a bit poly-anna at best, and totally unrealistic at worst.

As to point 11. No station should be excluded from being allowed to take advantage of rules that the station is competent and qualified to take advantage of. AM stations without an "approved" sampling system may have simply found a better way which is not "approved" under the old rules. It may be true that stations with marginal or poorly maintained systems will be more unstable, but this has nothing to do with whether or not the marginal system once met criteria to obtain approval. I have seen "approved" systems which were patently defective and provided false indications due to poor maintenance over time, and I have seen new and innovative methods, almost foolproof, which are not approved under current rules. Stations should not be excluded for failing to meet bureaucratic requirements. Stations should not, however, be blanketly included for the same reasons, either. The current rules requiring the Chief Operator to certify that whatever system is used meets all requirements should be sufficient. This then becomes a matter of demonstration and eases the enforcement burden on the Commission.

As to point 12. Equipment has existed for years that satisfies this concern, and has been dealt with in the Commissions clarification of dial-up remote control rules circa 1988.

As to point 13, and the overall concern of this writer, as well as points 32 through 36. It is unnecessary for the commission to spell out particulars as to each individual case for what constitutes adequate compliance and what does not. It will be sufficient to use wording such as :

... as a reasonable person, experienced in the particulars of broadcasting, could reasonably conclude is in accord with good engineering practice ... This would allow the commissions field staff some latitude in determining whether or not a licensee complied with the rules, or whether in a particular circumstance even intended to comply with the rules. This places the burden of proving compliance in-the-breach, on the licensee, and removes the burden of proving non-compliance from the Commission. This writer believes that this will encourage responsible efforts by broadcasters to comply with good practice to the extent of their abilities, as opposed to the current attitude which demands the Commission devote time and resources to proving willful noncompliance as defined by the letter of the law, ignoring the intent of same. This could even provide a means for the commission to "determine" compliance by mail, transferring the burden of proof-of-compliance to the licensee upon notification to the contrary.

As to points 19 through 23. This writer believes that industry leads government in developing new and better ways of doing everything. The Commission would do well to drop all of the "how to" rules in favor of objective or outcome based rules. It is the opinion of this writer, based on experience, that the Commissions field personnel and technical staff are more than capable of determining whether alternative methods are capable of insuring compliance with emission requirements. As an example of this, consider the current proof-of-performance rules. The commission allows alternative methods to demonstrate compliance, with the proviso that discrepancies be resolved in favor of a calibrated spectrum analyzer. This type of wording allows individual licensees the latitude to demonstrate compliance in any way appropriate, and is closely akin to the feeling expressed in the above paragraph.

As to points 25 through 31. Setting any specific time requirement can severely restrict the flexibility of correcting any given situation. Each individual set of circumstances requires a unique approach, and whether a licensee has met the circumstance in a timely fashion should be left to the field staff to determine. It can take an inordinate amount of time to go through the motions specified, particularly applying for an STA when it is likely the situation is resolved before the Commission can respond. This imposes an additional unnecessary burden on responsible licensees. Further, requiring a three minute limit may be unreasonably long for a situation which causes harmful interference to public safety radio services, or another broadcaster during morning drive time, and may be unreasonably short at 2:30 in the morning when no essential service is disrupted. Absent evidence to indicate otherwise, the time should be left to a "reasonable and appropriate" wording.

As to points 32 through 36. This writer again feels that specifying in this area is unnecessary and should be left to "reasonable and appropriate" discretion. The field staff knows that never looking at the indications is not reasonable, while at the same time, stationing an engineer at each monitor point of a directional AM station to watch the point full-time is unnecessary.

As to point 39. It is felt that some tightening is required here. I have personally seen broadcast transmitters adjusted by local TV repairmen because the bill was lower than employing a competent broadcast, or even a two-way, technician versed in adjusting transmitters. I have seen equipment operating improperly because the personnel designated by the licensee were not competent to make adjustments, although the choice of incompetent personnel, particularly designating program directors as chief operators, technically complies with the rules. It is felt that licensees should be able to designate any person, persons, or firm with demonstrated competence in transmitters to make such adjustments. I believe this is in the public interest in that proper operation is more likely, and harmful interference less likely, when equipment is adjusted by experienced personnel. It is felt that the licensee should bear a severe penalty for any attempt to reduce costs at the expense of proper operation in the public interest. Simply allowing that a licensee may be held responsible ( if and when caught ) for any discovered improper operation is insufficient.

Reasonable man rules have many precedents in state and local ordinances across this country, as well as in the commissions rules using the catch-all phrase "in accord with good engineering practice." It is felt that the commission will afford itself greater flexibility and ability to allow broadcasters, engineers, and the field staff to do their jobs unhampered by too many specifics spelled out in the rules, and when required, can issue policy statements regarding specifics without the burden of formal rule making proceedings. This also allows the commissions enforcement division greater flexibility to punish those few irresponsible broadcasters who use the specifics in the rules to hide deliberate negligence.